(4)

No. 94-1049

FILED
FEB 10 1995

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

HAROLD A. HOUDEK, *et al.*,
Petitioners,

v.

MOBIL OIL CORPORATION,
Respondent.

On Petition for a Writ of Certiorari to the Colorado Court of Appeals

---

PETITIONERS' SUPPLEMENTAL BRIEF

RODNEY R. PATULA
(Counsel of Record)
THOMAS L. ROBERTS
RICARDO M. BARRERA
PRYOR, CARNEY & JOHNSON
A Professional Corporation
6200 S. Syracuse Way, Suite 400
Englewood, Colorado 80111
(303) 771-6200
Counsel for Petitioners

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

400

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

No. 94-1049

HAROLD A. HOUDEK, *et al.*,
Petitioners,

v.

MOBIL OIL CORPORATION,
Respondent.

On Petition for a Writ of Certiorari to the Colorado Court of Appeals

---

PETITIONERS' SUPPLEMENTAL BRIEF

Pursuant to S.Ct.Rule 15.7, petitioners submit this supplemental brief, calling the Court's attention to a case decided on January 26, 1995 and relevant to the questions presented by the petition for writ of certiorari. Petitioners have argued that in cases of wrongful discharge, ERISA preemption of state-law claims and lack of standing to sue under ERISA are mutually exclusive results. Thus, *Houdek* and *Raymond* cannot both be right.

The Sixth Circuit Court of Appeals ratified that argument in a wrongful discharge case, *Swinney v. General Motors Corp.*, 1995 WL 27159 (January 26, 1985). Adverting to Congressional committee reports on ERISA and construing this Court's opinion in *Ingersoll Rand*, the Sixth Circuit wrote:

> The enforcement provisions of ERISA were meant "to provide the full range of legal and equitable remedies available in both state and federal courts and to remove jurisdictional and procedural obstacles which in the past appear to have hampered effective enforcement of fiduciary responsibilities under state law or recovery of benefits due participants." S.Rep. No. 127, 93rd Cong., 2nd Sess. 47 (1974), reprinted in 1974 U.S.C.C.A.N. 4838, 4871; *Mullins*, 23 F.3d at 668; *Vartanian*, 14 F.3d at 702. The plaintiffs' state law claims in this case were preempted by ERISA because they related to an ERISA plan. *Ingersoll-Rand v. McClendon*, 498 U.S. 133, 138-39 (1990). *We would clearly frustrate Congress's intent "to remove jurisdictional obstacles" if we held that ERISA preempts the plaintiffs' state law claims and yet denied them standing to pursue a federal claim.*

Swinney, 1995 WL 27159 at *5 (emphasis added). Notwithstanding the Tenth Circuit's *Raymond* decision that petitioners lack standing under ERISA and the *Raymond* court's observation that petitioners' claims of fraudulently induced discharge should be adjudicated under state law, the Colorado Court of Appeals in this case held that petitioners' state law claims are preempted by ERISA.

The Sixth Circuit has now joined the First, Second, and Eighth Circuits in expressly rejecting the *Raymond* holding on ERISA standing.[1] The Ninth and Fourth Circuits agree with the Tenth on the standing issue.[2] And on analogous facts, some courts are following *Raymond*'s notion that state-law claims for fraud are not preempted by ERISA where there is no standing to seek a remedy under

---

[1] *See Adamson v. Armco, Inc.*, —— F.3d ——, 1995 WL 2439 at *4 (8th Cir. 01/05/95); *Mullins v. Pfizer, Inc.*, 23 F.3d 663, 667-68 (2nd Cir. 1994); *Vartanian v. Monsanto Co.*, 14 F.3d 697, 702-03 (1st Cir. 1994).

[2] *See Harris v. Provident Life & Acc. Ins. Co.*, 26 F.3d 930, 934 (9th Cir. 1994); *Stanton v. Gulf Oil Corp.*, 792 F.2d 432, 435 (4th Cir. 1986).

ERISA.[3] But on such facts, other courts allow no federal or state remedy.[4]

Such splits among federal and state courts is inconsonant with the national uniformity of ERISA which Congress intended.

This Court should correct this fractured jurisprudence by granting the writ here and granting leave to file a motion to vacate the denial of certiorari in *Raymond*.

Respectfully submitted,

RODNEY R. PATULA
(Counsel of Record)
THOMAS L. ROBERTS
RICARDO M. BARRERA
PRYOR, CARNEY & JOHNSON
A Professional Corporation
6200 S. Syracuse Way, Suite 400
Englewood, Colorado 80111
(303) 771-6200
Counsel for Petitioners

---

[3] *See Pace v. Signal Technology Corp.*, 628 N.E.2d 20, 22 (Mass. 1994); *HealthAmerica v. Menton*, 551 So.2d 235, 238 (Ala. 1989), *accord Ingram v. American Chambers Ins. Co.*, 643 So.2d 575, 577-78 (Ala. 1994).

[4] *See Cutler v. Phillips Petroleum Co.*, 881 P.2d 216, 225 (Wash. 1994); *Sanson v. General Motors Corp.*, 966 F.2d 618, 623 (11th Cir. 1992); *Stanton v. Gulf Oil Corp.*, 792 F.2d 432, 435 (4th Cir. 1986); *but see and compare Madonia v. Blue Cross & Blue Shield of Virginia*, 11 F.3d 444, 446 (4th Cir. 1993).